



## PURCHASING TERMS

### 1 Introduction

- 1.1 These purchasing terms (“Terms”) as supplemented by the terms stated or referenced on the face of the Purchase Order (“PO”) issued by Buyer shall be the exclusive statement of the agreement between **Senseseeker Corp.** (“Buyer”) and the company identified as receiving the PO (“Seller”), which shall collectively be referred to as the “Parties” (or individually as a “Party”). Seller expressly accepts the PO terms and conditions and agrees that any additional or different terms provided by Seller (in a PO acknowledgment, in Seller’s quotation or otherwise) have no effect.
- 1.2 “PO” means the Purchase Order issued by Buyer to Seller, these Terms, and any attachments, changes, and amendments thereto. The various documents constituting the PO shall, insofar as is possible, be so interpreted as to be consistent with one another. In the event of a conflict the following order of precedence shall apply (from highest to lowest): (i) the change orders and amendments to the PO in reverse chronological order, (ii) the initial PO, and (iii) these Terms. If Seller’s proposal or quotation is incorporated by reference, the incorporation is only to define the Work and, if applicable and not defined elsewhere, billing rates. No other term set forth in Seller’s proposal shall bind Buyer.
- 1.3 The English language version of this Agreement shall control.
- 1.4 “Work” shall mean labor, services, materials, supplies, products, equipment, information, software, systems, data, drawings, designs, specifications, or reports furnished by Seller to Buyer in accordance with the PO.

### 2 Seller’s Acceptance

- 2.1 The furnishing or commencing of the Work, the acceptance of payment, or the signature of an authorized representative of Seller on the face of the Purchase Order and returning the executed Purchase Order to Buyer shall constitute Seller’s unqualified acceptance of the PO.
- 2.2 Any qualification or conditions provided in Seller’s acceptance shall have no effect on the PO nor on the acceptance thereof.
- 2.3 Upon the request of Buyer, Seller shall provide a copy of the PO signed by an authorized representative of Seller and return the same without any attached qualification or condition.

### 3 Prime Contract & Government Contracts

- 3.1 If the Work performed under this PO will be in furtherance of work undertaken by Buyer under a prime contract (“Prime Contract”) Seller shall be bound by the terms of this Article.
- 3.2 Seller shall be bound by the flow down clauses from the Prime Contract attached to the PO. Such flow down clauses shall have the same precedence as the PO.
- 3.3 All communications with Buyer’s customer or any higher tier customer pertaining to the Work shall be through Buyer. Should Buyer’s customer or any higher tier customer contact

Seller directly about the Work, Seller shall make Buyer aware of and the nature of the communications immediately.

- 3.4 For avoidance of doubt, in the event Buyer’s customer or a higher tier customer is the United States Government (USG), Seller agrees to be bound by any flow down clauses from such government contract. To the extent that a conflict exists between a mandatory flow-down clause and any other term of the PO, such mandatory flow-down clause shall control.

### 4 Delivery

- 4.1 Time is of the essence for the PO. The delivery terms for the Work shall be as set forth in the PO. If a firm “Date Required” is specified in the PO, delivery shall not be made more than 5 calendar days prior to the date unless agreed in writing by Buyer. If a date range is specified, delivery shall be made within such date range. An “NLT” (no later than) date shall be delivered at as soon as practical but no later than the indicated date. If no delivery date is specified, delivery shall be as soon as practical, but in not more than 30 days from the date of the PO.
- 4.2 Seller shall provide all necessary shipping documents in connection with the Work, including, but not limited to, customs invoices, as applicable and packing lists in accordance with Buyer’s requirements and requests.
- 4.3 If the PO indicates Buyer is covering shipping costs for any portion of the Work, any excess shipping costs that results from Seller failing to use Buyer’s indicated shipping method shall be solely Seller’s responsibility.

### 5 Title & Risk of Loss

- 5.1 Title to the Work shall pass to Buyer at the earlier of payment for such Work or receipt of the Work by Buyer. However, if the Work is in furtherance of a Prime Contract, title to the Work shall pass to Buyer in the same manner as the Prime Contract. In the event of advance or progress payments Seller shall mark the Work as Buyer’s property and execute and deliver such documents as may be deemed necessary by Buyer to confirm that title to such Work has passed to Buyer. All Work shall be delivered free and clear of any liens or claims by Seller, Seller’s suppliers or any other third party.
- 5.2 Seller represents and warrants that to the extent permitted by applicable law, it waives and releases any and all liens, claims or rights of lien which it has or may have against Buyer or Buyer’s customer (or any property owned by Buyer or Buyer’s customer) on account of the Work furnished pursuant to the PO. Seller agrees to indemnify, defend and hold harmless Buyer and Buyer’s customer, their assigns and affiliates from any claims or demands for payment in connection with Work performed by Seller or Seller’s suppliers or subcontractors of any tier under the PO and Seller shall pay any costs and expenses including counsel or attorney’s fees incurred by Buyer, Buyer’s customer or Seller in the defense or settlement of any such claims and demands.

- 5.3 Unless otherwise specified in the PO, risk of loss for the Work or any portion thereof shall pass to Buyer upon receipt of such Work by Buyer according to the delivery terms in the PO.

## **6 Payment**

- 6.1 Unless otherwise specified on the face of the PO Buyer's payment shall be NET 30. Any time frame for payment shall begin only upon receipt of an invoice detailing the request for payment satisfactory to Buyer and only after Buyer has determined that the Work for which payment is being requested has been performed in accordance with the PO. Payment shall not relieve Seller from any of its obligations to Buyer under the PO.
- 6.2 Payment for fixed-price items shall be made as a lump sum for all such line items unless indicated otherwise in the PO.
- 6.3 For Work on a Time and Expense basis, compensation will be made only to the extent to which Seller presents documented evidence of fees earned in proportion to progress in accomplishing the Work, and expenses incurred during the period for which payment is requested. In no case shall the total compensation exceed the applicable sum set forth on the PO. Seller shall not invoice for such Work more frequently than monthly. Buyer shall have no obligation to pay for costs or fees incurred more than 90 days prior to invoicing. Hourly rates, any mark up, and any fee shall be calculated as set forth in this PO. All expenses must be preapproved in writing by Buyer's authorized representative. Unless set forth in this PO, no markup or fee shall be added to expenses or work performed by Seller's subcontractors. Seller (including Seller's subcontractors) shall maintain records of such Work for a period of at least 6 years from the termination of this PO. During the term of this PO and for 3 years thereafter, within 7 days from a request by Buyer to audit such records Seller shall accommodate Buyer's auditors providing them access to such records at Seller's address indicated on the PO (or another mutually agreed to location), providing adequate facilities to inspect such records and making a good faith effort to cooperate with and accommodate such persons performing the audit.

## **7 Taxes & Duties**

- 7.1 If the PO does not include sales or use taxes applicable to the Work and Seller is required by applicable law to collect such taxes in the jurisdiction in which the delivery point is located (as identified in the PO), Seller shall notify Buyer prior to acceptance of the PO. Seller shall add the applicable sales or use tax to its invoices (as a separate item) and Buyer will pay Seller as an addition to the purchase price upon its verification that such amount is due and payable.

## **8 Representations & Warranty**

- 8.1 Seller warrants that the Work furnished hereunder shall be free from defects, meet the requirements of this PO and generally accepted engineering and manufacturing standards, and will operate in accordance with Seller's operating recommendations and limitations (or, if not provided, standard industry practice) for a period of 1 year after the delivery and acceptance by Buyer (the "Warranty Period").

Notwithstanding the foregoing, the Warranty Period for any portion of a delivery identified as a "prototype" on the PO shall be 90 days.

- 8.2 Seller shall correct any nonconformity with this warranty at its sole expense by promptly repairing or replacing the nonconformity (and correcting any plans, specifications, or drawings affected). In the event of any breach or non-compliance by Seller with this warranty obligation, Buyer may return the Work and Seller shall refund the corresponding portion of PO price within 15 days.
- 8.3 Seller warrants that any technical field assistance or other services furnished by it shall be provided with the degree of skill and care ordinarily used by other reputable members of Seller's profession and shall be in strict compliance with the requirements of this PO. Seller shall correct any nonconformity with this warranty at its sole expense, as directed by Buyer, by promptly re-performing the Work or refunding to Buyer the corresponding portion of the PO price within 15 days.
- 8.4 Seller represents that performance of the Work does not create any conflict of interest and agrees not to take any other assignment from any third party that might create an actual or apparent conflict of interest with respect to the Work.

## **9 Changes & Amendments**

- 9.1 Buyer may at any time, by written notice to Seller, make changes or modifications to the Work, including substitutions of materials or accessories. Such changes or modifications may only be authorized by Buyer's purchasing representative. If any such change or modification causes an increase or decrease in the cost of or the time required for performance of the Work, Seller shall notify Buyer in writing immediately and an equitable adjustment in the price or time or both will be negotiated and a written modification will be made to the PO. Any claim for adjustment by Seller must be asserted in writing within 10 calendar days after receipt of notice from Buyer. If a change or modification reduces the scope of the Work, Buyer will not be responsible for or liable to compensate Seller for any loss of profit, loss of opportunity, or any consequential loss or damage howsoever and wherever arising.
- 9.2 Any amendment to the PO shall only be valid when done in writing and signed by both Buyer and Seller.

## **10 Inspection & Acceptance**

- 10.1 Except as otherwise agreed in writing, all Work provided under the PO shall be subject to final inspection and acceptance by Buyer at its destination for conformance to the PO and associated referenced descriptors, notwithstanding any previous inspection or acceptance at the source of manufacture. Seller shall bear all risks after notice of rejection for failure to conform to the PO and associated referenced descriptors and shall, at Buyer's request, promptly make all necessary replacements at Seller's expense.
- 10.2 Seller shall provide Buyer with access to facilities or records of Seller or its subcontractors relating to the Work for inspection or audit.

## 11 Insurance & Indemnity

- 11.1 Seller shall, to the extent permitted by applicable law, defend, indemnify and hold harmless Buyer, its subsidiaries, affiliates, customers and other designated parties from and against any and all losses including costs, attorney's fees and settlements arising out of or in connection with the Work, or which arise out of, result from, or are contributed to by the acts, omissions, fault or negligence in any form of Seller or any other parties for which Seller may be responsible.
- 11.2 Seller agrees that it now carries and will continue to carry during the performance of the Work, at its own expense, at least the greater of (i) if applicable, the insurance requirements of the Prime Contract; or (ii) the insurance policies set forth in this Article, including any coverage required by law.
- 11.3 Seller shall maintain and shall require its subcontractors to maintain the following types of insurance in no less than the amounts indicated. Seller shall maintain such insurance in full force and effect until the Work has been fully performed including removal of all Seller equipment and personnel (including subcontractors) from Buyer's or Buyer's customer's premises. Buyer, its subsidiaries, affiliates, Buyer's customer and/or any other designated party as applicable shall be named as an additional insured with respect to the Commercial General Liability and Automobile Liability policies. All of Seller's policies of insurance, except for Workers' Compensation and Employers Liability, shall be primary insurance and noncontributing with any other insurance maintained by Buyer, its subsidiaries, affiliates, customers and other designated parties. The limits of insurance set forth below may be satisfied by any combination of excess and primary insurance coverage.
  - a) Worker's Compensation Insurance in accordance with the statutory requirements of the location in which the Work is performed.
  - b) Employer's Liability Insurance with a minimum limit of \$1,000,000 each occurrence.
  - c) Commercial General Liability Insurance (including coverage for Premises/Operations, Product/Completed Operations, and Contractual Liability Coverage covering Seller's contractual liability) with minimum limits of \$1,000,000 per occurrence.
  - d) Automobile Liability Insurance including coverage for owned, hired, and nonowned automobiles with minimum limits of \$1,000,000 per occurrence.
- 11.4 Neither the procurement, maintenance or acceptance of insurance coverage by Buyer shall relieve Seller of liability for loss or damage in excess of the policy coverage or limits specified herein or in any way limits or releases Seller of its obligations or liabilities under the PO.
- 11.5 All insurance certificates shall be in a form satisfactory to Buyer. Failure of Buyer to request certificates of insurance does not constitute a waiver of Seller's obligations. Buyer reserves the right at any time during performance of Work by Seller to require Seller to provide insurance in types and

amounts in a form different and/or greater than that stated above with respect to unique circumstances (Work related or otherwise) and as may otherwise be required by Buyer's customers or required by governmental entities.

## 12 Intellectual Property Rights

- 12.1 Except as stated otherwise in the PO or as otherwise provided for in this Article, Buyer will solely own any and all deliverables and other work or other materials created by or for Seller in connection with the Work (collectively, "Work Product") upon its creation. Seller agrees to and does hereby grant to Buyer all right, title and interest to all Work Product created by Seller. Seller will promptly take all steps necessary to memorialize Buyer's full rights in such Work Product, including intellectual property rights, free of any claims, interest, or rights of third parties. Notwithstanding the above, to the extent that any Work Product is prepared using or incorporating any pre-existing or independently developed tools, technologies, or other materials previously owned or independently developed by Seller ("Background Materials"), nothing herein will convey ownership of such Background Materials to Buyer. However, to the extent that such Background Materials become incorporated into the Work Product, Buyer will have a perpetual, paid-up, sublicensable right to use, adapt, or enhance the Background Materials in connection with the Work Product.
- 12.2 Notwithstanding the foregoing, for product deliverables that consist entirely of Seller Background Materials, Buyer shall only receive the licenses implied by applicable law and any additional licenses ordinarily granted by Seller to its customers. For software provided with such product, Buyer shall receive a perpetual, paid-up license to use such software in connection with the product. Any additional terms provided with such software (e.g., "click wrap") shall have no effect and are hereby expressly rejected.
- 12.3 If this PO is a government subcontract that requires subcontractors to retain ownership of certain intellectual property rights, Seller agrees to grant and hereby grants a non-exclusive, worldwide, perpetual, paid-up, sublicensable license to use, adapt, offer for sale, and sell such intellectual property.
- 12.4 The PO does not confer or grant, in any manner whatsoever, any license or right under any patent, trademark, trade secret, copyright or other intellectual property right held by Buyer, unless expressly set forth in the PO.

## 13 Intellectual Property Indemnification

- 13.1 Seller shall defend, indemnify and hold harmless Buyer, Buyer's customer, and their officers, agents, and employees from any and all liability, including costs, attorney's fees and settlements for infringement of any patent, copyright, trademark and other intellectual property right arising out of performance by Seller under the PO or Buyer's or Buyer's customer's possession or use of the Work. Buyer shall inform Seller as soon as practicable of any suit or claim alleging such infringement and shall give Seller such opportunity, if afforded by applicable laws, rules, or regulations to participate in the defense thereof.

13.2 In case the Work, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer or Buyer's customer is enjoined, Seller will, at its option and its own expense: (a) procure for Buyer the right to continue using said Work; (b) replace it with substantially equivalent non-infringing Work; or (c) modify it so it becomes non-infringing.

#### **14 Confidential Information**

14.1 All information marked or designated as confidential or proprietary relating to Work hereunder furnished by Buyer to Seller or developed by Seller for Buyer (including Work Product) shall (except to the extent such information has been independently developed prior to the PO by Seller or is received by Seller from a third party without restriction) be treated by Seller as Buyer's confidential information.

14.2 Seller agrees that it will use Buyer's confidential or proprietary information only for the Work ("Permitted Use"). Seller shall not transmit or further disclose such Buyer confidential information to any third party, including its parent, affiliates, subsidiaries or subcontractors without first obtaining the prior written approval of Buyer. If Seller is required by a court or federal, state or local agency to disclose any Buyer proprietary information, Seller shall promptly notify Buyer of such order so that Buyer may seek a protective order or take action as it deems appropriate. In such circumstances, Seller shall exercise reasonable efforts to disclose only the minimal amount of Buyer proprietary information required to satisfy such order. All Information delivered pursuant to this PO shall be maintained in confidence with the same level of care as Seller maintains its own confidential and proprietary information but in no event maintained with any less than a reasonable standard of care from the date of disclosure until 99 years after the expiration or termination of this PO.

14.3 Seller shall return or certify in writing such Buyer confidential information has been destroyed upon the request of Buyer.

14.4 Seller's duties of confidentiality under this PO shall not apply to information which Seller can show is the same as information which (i) is generally known or readily available to the trade or public; or (ii) was in the possession of Seller or an affiliate of Seller and not subject to a confidentiality obligation prior to its disclosure hereunder; or (iii) was legally acquired from a third party without restriction; or (iv) was developed independently by Seller without benefit of confidential and proprietary information furnished hereunder by Buyer.

#### **15 Buyer Furnished Property**

15.1 In the event Buyer provides Seller with property in connection with the Work (Buyer Furnished Property) Seller shall use the same solely for the Work. Buyer Furnished Property is provided without warranty. Seller shall not attempt to reverse engineer any Buyer Furnished Property or otherwise misappropriate, circumvent or violate any of Buyer's intellectual property rights.

#### **16 Delays & Force Majeure**

16.1 Seller shall promptly notify Buyer in writing of any event or circumstance which may result in a delay in the performance of the Work. Neither Party shall be considered to be in default or in breach of its obligations under the PO if and to the extent that its failure or delay in performance is actually caused by a Force Majeure Event. Force Majeure Events means acts of God or nature, acts of civil or military authority, fires, floods, epidemic, war, or like occurrences that are beyond the control and without the fault of either Party and which can be demonstrated by the affected Party to have a direct effect on the performance of its obligations under the PO.

16.2 Seller must exercise its best efforts to mitigate the effect of such Force Majeure Events on the performance of the Work. Any relief granted by Buyer to Seller shall be limited to an extension of the time of performance to the extent caused by the Force Majeure Event, as determined by Buyer.

#### **17 Suspension & Termination**

17.1 Buyer may, at any time, by written order to Seller, require Seller to suspend all, or any part of the Work called for by this PO. Upon receipt of the suspension order, Seller shall immediately comply with its terms and take all reasonable steps to minimize any costs for Work related to the suspension order. Within 60 days Buyer may cancel the suspension order and in such event Seller shall resume Work, or terminate the Work in accordance with this Article. In the event Buyer cancels the suspension order and requests Seller to resume the Work, Buyer will provide an equitable adjustment in the delivery date, and Buyer will modify the PO accordingly, in writing.

17.2 The PO and any and all rights granted and obligations assumed hereby may be terminated by Buyer for its convenience immediately upon written notice to Seller. Upon receipt of a notice of termination and except as otherwise mutually agreed, Seller shall (i) stop Work under the PO on the effective date of the notice of termination, and (ii) submit a termination claim within 30 calendar days after the effective date of the termination notice incorporating all claims of Seller. The amount to which Seller shall be entitled upon complete termination of the PO shall be determined by the Parties hereto as being a fair and reasonable amount for the effort performed prior to the date of notice of termination; Seller waives any claims for damages, including anticipated profits for work not actually performed. Buyer's total liability to Seller for such termination shall not exceed the PO price of the Work to which such termination applies.

17.3 Buyer may terminate this PO for cause upon 30 days prior written notice in the event the Seller (i) materially breaches this PO and fails to cure the breach within this 30 day period, (ii) fails to make progress so as to endanger performance of the PO and fails to cure said failure within this 30 day period, (iii) becomes insolvent, ceases business as a going concern, or becomes unable to pay its debts generally as they become due. In the event that it is determined that Buyer's exercise of the provisions for such termination was for any reason not

justified or improper, the termination shall be deemed a termination for convenience.

### 18 Compliance

- 18.1 Seller agrees to comply with all applicable laws, rules, regulations, codes, standards, permits, requirements and ordinances ("Applicable Laws") in the execution and performance of the PO.
- 18.2 Seller agrees to comply with export license or other international trade controls. Seller represents and warrants that Seller will comply with applicable laws and regulations relating to export or re-export, including the Export Administration Act of 1979, as amended, the U.S. Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR") U.S. Foreign Assets Control Regulations ("OFAC"), and U.S. customs regulations (19 CFR Part 4 to 199). Seller represents and warrants that it is not on the Denied Persons, Specially Designated Nationals or Debarred Persons List, is not located in a country subject to embargo under EAR, ITAR or OFAC regulations and is not otherwise prohibited by U.S. or foreign law.
- 18.3 Seller shall to the extent permitted by applicable law defend, indemnify and hold harmless Buyer, its affiliates and customers from and against any and all losses, expenses, claims, demands, and causes of action of every kind and character (including those of the Parties, their agents and employees) for liability, damages, fines or penalties including costs, attorney's fees and settlements arising out of or in connection with any breach of any provision of this Article.
- 18.4 If Buyer has any concerns or suspects that any violation of the above provisions has taken place, Seller shall cooperate reasonably in good faith to determine whether such a violation occurred and take all appropriate action to remedy or redress such a violation.

### 19 Miscellaneous

- 19.1 Seller shall not subcontract the Work to be supplied under the PO without the prior written approval of Buyer. This provision shall not apply to purchases of standard commercial articles or raw materials which Seller is required to purchase in order to perform the Work. Buyer reserves the right to review the quality programs, processes and capabilities of all subcontractors or suppliers.
- 19.2 The PO shall be binding and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Seller shall not assign its rights or obligations under the PO without the prior written consent of Buyer. Any attempted assignment by Seller without Buyer's prior written consent shall be null and void.
- 19.3 Seller and Buyer shall use reasonable efforts to amicably resolve disputes arising out of the PO prior to commencing any formal legal proceedings. Such efforts may include use of a mutually agreed alternative dispute resolution mechanism. Any action or proceeding filed by Seller against Buyer under or in connection with the PO shall be filed

exclusively in the state or federal courts in Santa Barbara, California, which shall then have exclusive jurisdiction. Each Party hereby waives its right to a trial by jury in connection with any action or proceeding filed by it or the other Party. If applicable, to the extent that the dispute relates to the Prime Contract, Seller hereby consents to the venue and jurisdiction as may be set forth in the Prime Contract.

- 19.4 This PO shall be governed by the laws of the State of California, USA, except its rules regarding conflict of laws.
- 19.5 Seller shall comply with the PO and all referenced documents and shall clarify with Buyer any inconsistencies or conflicts. Should Seller fail to resolve any such conflicts or inconsistencies in a prompt and timely manner, Seller shall be solely responsible for any errors resulting from any conflicts or inconsistencies. Where documents are referenced, the issue date in effect at the time of the PO or change notice placement shall be applicable, unless another issue date is specified.
- 19.6 No news release or any other publicity in any way relating to Buyer or Seller concerning the PO shall be made by Seller to any news media or the general public without the prior written approval of Buyer.
- 19.7 Seller acknowledges and agrees that it has reviewed this PO with counsel and that neither it nor Buyer shall be deemed to be the scrivener of this document for the purpose of drawing an inference to construe an ambiguity herein.
- 19.8 The rights and remedies of Buyer provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law.
- 19.9 The PO contains the entire agreement of the Parties and expressly limits acceptance to the PO terms. Failure of any Party to enforce its rights under the PO shall not constitute a waiver of such rights or of any other right under the PO. In case any provision in or obligation under this PO shall be invalid, illegal or unenforceable, (i) the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and (ii) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions.